



State of California

Employment Training Panel

Arnold Schwarzenegger, Governor

December 8, 2008

Gustavo Marquez
Chief Executive Officer
Marquez Brothers International
5801 Rue Ferrari
San Jose, CA 95138

Dear Mr. Marquez:

Enclosed is our final audit report relative to the Employment Training Panel Agreement No. ET05-0197 for the period November 8, 2004 through November 7, 2006.

We did not receive a response to the draft audit report; therefore, our findings and recommendations remain unchanged.

Also enclosed is a demand letter for payment of costs disallowed in the audit report. Payment is due upon receipt of this letter. If you wish to appeal the audit findings, you must follow the procedure specified in Attachment A to the audit report.

We appreciate the courtesy and cooperation extended to our auditors during the audit. If you have any questions, please contact Charles Rufo, Audit Director, at (916) 327-5439.

Sincerely,

Original signed by:

Charles Rufo
Audit Director

Enclosures

cc: David Villanueva, Chief Financial Officer

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MARQUEZ BROTHERS INTERNATIONAL

Agreement No. ET05-0197

Final Audit Report

For The Period

November 8, 2004 through November 7, 2006

Report Published December 8, 2008

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AUDITOR'S REPORT

Summary

We performed an audit of Marquez Brothers International's compliance with Agreement No. ET05-0197, for the period November 8, 2004 through November 7, 2006. Our audit pertained to training costs claimed by the Contractor under this Agreement. Our audit was performed during the period June 16, 2008 through September 22, 2008.

The Employment Training Panel (ETP) reimbursed the Contractor a total of \$1,698,307. Our audit supported \$106,262 is allowable. The balance of \$1,592,045 is disallowed and must be returned to ETP. The disallowed costs resulted from 672 trainees who had unsupported class/lab training hours, 20 trainees who were placed in occupations not included in the Agreement, 23 trainees who did not meet minimum wage requirements, and 8 trainees who did not meet post-training retention requirements. We also noted administrative findings for noncompliance with California Unemployment Insurance (UI) Code and Subagreement Payment Provisions, and inaccurate reporting of trainee wage rates.

AUDITOR'S REPORT (continued)

Background

Marquez Brothers International (MBI) d.b.a. Marquez Brothers is a family owned corporation that was founded in 1981 by Gustavo Marquez. The company is headquartered in San Jose, California. Marquez Brothers manufactures and distributes Mexican style dairy products, meat items, and canned goods to customers in the United States, Canada, and Europe. In addition, the Company is a major importer of national leading brand grocery items from Mexico, Central America, and other Latin American countries.

This Agreement was the first between ETP and Marquez Brothers. With ETP support and funding, Marquez Brothers was to provide a structured company-wide training program that would allow employees to learn new skills necessary to increase performance in their daily work routines in order to help the Company exceed process improvements goals, increase productivity goals, and transition Marquez Brothers into a high performance workplace.

Adcon Technical Institute (ATI College or ATI) was to provide contract administration and training services to MBI. Training services were to include Business, Computer, Manufacturing, and Management Skills training.

This Agreement allowed Marquez Brothers to receive a maximum reimbursement of \$2,028,000 for retraining 1,200 employees. During the Agreement term, the Contractor placed 689 trainees and was reimbursed \$1,698,307 by ETP.

Objectives, Scope, and Methodology

We performed our audit in accordance with *Government Auditing Standards*, promulgated by the United States General Accounting Office. We did not audit the financial statements of Marquez Brothers International. Our audit scope was limited to planning and performing audit procedures to obtain reasonable assurance that Marquez Brothers International complied with the terms of the Agreement and the applicable provisions of the California Unemployment Insurance Code.

Accordingly, we reviewed, tested, and analyzed the Contractor's documentation supporting training cost reimbursements. Our audit scope included, but was not limited to, conducting compliance tests to determine whether:

- Trainees were eligible to receive ETP training.
- Training documentation supports that trainees received the training hours reimbursed by ETP and met the minimum training hours identified in the Agreement.

AUDITOR'S REPORT (continued)

- Trainees were employed continuously full-time for 90 consecutive days after completing training, and the 90-day retention period was completed within the Agreement term.
- The Contractor's cash receipts agree with ETP cash disbursement records.
- Payments related to the Agreement were made to subcontractors.

As part of our audit, we reviewed and obtained an understanding of the Contractor's management controls as required by *Government Auditing Standards*. The purpose of our review was to determine the nature, timing, and extent of our audit tests of training costs claimed. Our review was limited to the Contractor's procedures for documenting training hours provided and ensuring compliance with all Agreement terms, because it would have been inefficient to evaluate the effectiveness of management controls as a whole.

Conclusion	As summarized in Schedule 1, the Summary of Audit Results, and discussed more fully in the Findings and Recommendations Section of our report, our audit supported \$106,262 of the \$1,698,307 paid to the Contractor under this Agreement is allowable. The balance of \$1,592,045 is disallowed and must be returned to ETP.
Views of Responsible Officials	The audit findings were discussed with David Villanueva, Chief Financial Officer, and Jose Maldonado, Controller, at an exit conference held on October 15, 2008. A draft audit report was issued to the Contractor on November 6, 2008. The Contractor did not respond in writing to the draft review report.
Audit Appeal Rights	If you wish to appeal the audit findings, it must be filed in writing with the Panel's Executive Director within 30 days of receipt of this audit report. The proper appeal procedure is specified in Title 22, California Code of Regulations, Section 4450 (attached).

AUDITOR'S REPORT (continued)

Records

Please note the ETP Agreement, Paragraph 5, requires you to assure ETP or its representative has the right, "...to examine, reproduce, monitor and audit accounting source payroll documents, and all other records, books, papers, documents or other evidence directly related to the performance of this Agreement by the Contractor... This right will terminate no sooner than four (4) years from the date of termination of the Agreement or three (3) years from the date of the last payment from ETP to the Contractor, or the date of resolution of appeals, audits, or litigation, whichever is later."

Charles Rufo
Audit Director

Fieldwork Completion Date: September 22, 2008

This report is a matter of public record and its distribution is not limited. The report is intended for use in conjunction with the administration of ETP Agreement No. ET05-0197 and should not be used for any other purpose.

SCHEDULE 1 – Summary of Audit Results

MARQUEZ BROTHERS INTERNATIONAL

AGREEMENT NO. ET05-0197

FOR THE PERIOD

NOVEMBER 8, 2004 THROUGH NOVEMBER 7, 2006

	<u>Amount</u>	<u>Reference*</u>
Training Costs Paid By ETP	<u>\$ 1,698,307</u>	
Disallowed Costs:		
Unsupported Class/Lab Training Hours	1,582,971	Finding No. 1
Ineligible Occupations	5,538	Finding No. 2
Minimum Wage Requirement Not Met	2,600	Finding No. 3
Post-Training Retention Requirements Not Met	936	Finding No. 4
Noncompliance with California Unemployment Insurance (UI) Code and Subagreement Payment Provisions	-	Finding No. 5
Inaccurate Reporting	<u>-</u>	Finding No. 6
Total Costs Disallowed	<u>\$ 1,592,045</u>	
Training Costs Allowed	<u><u>\$ 106,262</u></u>	

* See Findings and Recommendations Section.

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 – Marquez Brothers International (MBI), in conjunction with its Unsupported administrative and training subcontractor, Adcon Technical Institute Class/Lab Training (ATI College or ATI), had no training documentation and/or did not Hours accurately document training to support required training hours for 672 of 689 trainees placements, thus inappropriately claiming reimbursement of \$1,582,971 from ETP.

The conclusions drawn by the audit team are based on several methods of evidence collection:

- Physical evidence – original signed training rosters by trainees and trainers
- Testimonial evidence – interviews of MBI and ATI representatives
- Documentary evidence – obtained through reviews of training subagreements, training invoices and payments, accounting records, training schedules, internal e-mails and memo's, etc.)
- Analytical evidence – developed by comparative and deductive analysis from several pieces of evidence gathered by the audit team

Following are some of the key elements related to the evidence gathered during the course of the audit:

- On June 16, 2008, MBI and ATI representatives stated during the entrance conference that MBI Representative No. 1 (see Attachment E) collected the original training rosters and sent them to ATI. ATI staff then input trainee attendance for each trainee via ETP's Internet Class/Lab Tracking System to request ETP reimbursement. ATI Representative No. 1 stated once the training data was submitted to ETP, the original rosters were subsequently returned to MBI. Original training rosters were retrieved from the San Jose office of MBI Representative No. 1; however, these original rosters only accounted for 8 percent of the total funding reimbursed by ETP, as discussed below.
- MBI submitted 12 invoices for 689 trainees requesting ETP reimbursement totaling \$1,698,307 from June 3, 2005, through August 14, 2006. The break-out of trainees included 283 Job No. 1 trainees and 406 Job No. 2 trainees, totaling 54,406 and 76,233 training hours, respectively [Note: There were 207 MBI employees who were placed in both Job Nos. 1 and 2; thus, 482 MBI employees participated in the ETP Agreement].
- The maximum training hours allowed by job number was 200; we found that 76 percent (523 of 689 trainees) had reported the maximum of 200 training hours. Only 3 percent (17 of 523 trainees) had training documentation to support the reported

FINDINGS AND RECOMMENDATIONS (continued)

200 hours. Additionally, 190 trainees had reported 399 to 400 training hours during the Agreement term. The majority of trainees who had reportedly received 399-400 hours of training were employed as Warehouse Staff, Office/Clerical Staff, and Commercial Drivers (see Audit Finding No. 2 for further analysis).

- A complete review of all original MBI training rosters supported only 8 percent (10,750 of 130,639 hours) of total training hours reimbursed by ETP.
- Overall, 77 percent (533 of 689 trainees) did not have training documentation to support any training occurred.
- Seven members of MBI's executive staff were placed in the Agreement, including job titles of CEO, CFO and Vice-President. All were reported to have received between 200 to 400 training hours. However, there was no training documentation to support that any of this training occurred [Note: MBI Representative No. 2 (CFO) acknowledged attending and/or observing a few hours of training but stated that he did not participate in 400 training hours as reported].
- A May 9, 2008 memo was discovered by the ETP Audit team, which was sent from MBI's Human Resources to employees requesting they participate in the reconstruction of training records by signing a "participation document." This document included pre-filled sections including trainee name, type of training, training hours, and training dates. The memo stated, in part, to "...complete the attached participation document by printing your full name as well as your signature in the appropriate labeled section(s). This document only serves as acknowledgment of your participation during these training sessions provided by ATI College and nothing more... [Note: MBI Representative No. 2 later acknowledged that MBI should have notified the ETP audit team of these re-created rosters prior to conduct of the audit]."
- The audit team located the reconstructed training rosters completed by MBI employees after the term of the agreement (based on the May 9, 2008 memo), which call into question the authenticity of the training reported and reimbursed by ETP. A sampling of these rosters for Trainee Nos. 68, 257, 484 and 504 included signed and dated written statements, which stated the following: "Do not recall attending classes"; "Do not recall taking class"; "These meetings never existed"; and "I never received this training." However, each of these 4 trainees had 200 hours of training reported and reimbursed by ETP.

FINDINGS AND RECOMMENDATIONS (continued)

The following criteria are applicable:

- Title 22 California Code of Regulations, Section 4442(b) requires Contractor to maintain and make available records that clearly document all aspects of training. All classroom/laboratory training records must include hours of attendance and dates of training, be certified daily by the instructor during training, signed (or initialed) daily by the trainee, and signed by the trainer for each type of training.
- Paragraph 2 (b) of the Agreement states: "Reimbursement for class/lab and videoconference training for trainees in Job Number 1 (Job No. 2 was added in Amendment No. 1) will be based on the total actual number of training hours..., up to the maximum specified in Chart 1, providing the minimum and no more than the maximum hours are met." Exhibit A, Chart 1, pages 5 and 6, required that Job No. 1 trainees complete between 70 to 200 class/lab hours and Job No. 2 trainees complete between 24 to 200 class/lab hours.
- Paragraph 5 a.1. of the Agreement states in part that "Records must be retained within the control of the primary Contractor and be available for review at the Contractor's place of business within the State of California..."

Audit Sample

Our initial audit sample for the testing of class/lab training hours included 74 (69 random/statistical and 5 judgmental/non-statistical) of the 689 trainees placed in the Agreement. Auditor's review of original training rosters found that only 1 of the 74 trainees met ETP record keeping requirements for training hours reported to ETP. Thus, 68 of the 69 random trainees (99 percent error rate) were disallowed, along with the 5 judgmental trainees, due to a lack of and/or insufficient training rosters. The amount disallowed for the initial audit sample was \$168,727 (\$64,532 + \$104,195) of \$182,221 reimbursed by ETP, as shown in the following table (see next page):

FINDINGS AND RECOMMENDATIONS (continued)

	Job No. 1	Job No. 2
Trainees Placed	283	406
Random Statistically Selected Trainees [a]	28	41
Random Statistically Selected Trainees Disallowed [b]	27	41
Error Rate [b] ÷ [a]	96%	100%
Non-Random Selected Trainees [c]	1	4
Non-Random Selected Trainees Disallowed [d]	1	4
Total Trainees Audited [a] + [c]	29	45
Total Audited Trainees Disallowed [b] + [d]	28	45
Total Costs Disallowed for Trainees Audited	\$64,532	\$104,195

In lieu of extrapolating a probable error rate based on the initial statistical sample audit results (99 percent error rate), and with a good cause to believe that a significant overpayment had occurred, ETP Auditor performed a review and analysis of all original MBI class/lab rosters for the remaining 615 placed trainees. The expanded review determined that 672 of 689 trainees (98 percent error rate) were found to have material unsupported training hours. For 77 percent of these trainees (533 of 689), they did not appear on any MBI rosters. Please see Attachment A, Finding No. 1, for a detailed break-out of audited training hours by trainee. Thus, training hours were disallowed for a total of 672 trainees (73 initial audit sample + 599 expanded audit sample) or 98 percent of trainees placed. The total costs disallowed were \$1,582,971.

Subcontracted Training by ATI

Review of the original training rosters, also raised questions to the validity and accuracy of training reported to ETP. MBI provided other training information, including training invoices from ATI and the corresponding payments from MBI, as detailed in a training subagreement between MBI and ATI (see Audit Finding No. 5 for further analysis). The invoices included training dates and hours for training that occurred at MBI facilities in City of Industry, San Jose, and Fresno. Also, a "Computer Skills Training Schedule" prepared by ATI included detailed training information including training dates, training start and end time, and training topics.

We found that the training hours submitted to ETP by ATI, via the Internet Class/Lab tracking system did not agree with the original training rosters and were not an accurate reflection of actual

FINDINGS AND RECOMMENDATIONS (continued)

training when compared to ATI training invoices and the Computer Skills training schedule. For instance, the training schedule identified that ATI, as a training subcontractor, was to conduct two training sessions once a week for different groups of MBI employees at San Jose. The 2-hour sessions in topics such as "Microsoft Word, PowerPoint, and Excel" were to occur from May 17, 2005, through December 6, 2005. The times for Session Nos. 1 and 2 were 9:00 a.m. to 11:00 a.m. and 1:00 p.m. to 3:00 p.m., respectively. However, the original signed training rosters for 36 trainees in Session Nos. 1 and 2 at San Jose show all classes at "8 hours" per day [Note: the training hours were marked in pencil, while other items were marked in ink]. An increase in hours billed per session from 2 to 8 hours per day (quadrupling), would result in an overstated increase of \$1,950 in ETP funding per trainee [(25 days x 8 hours per day x \$13 per hour) - (25 days x 2 hours per day x \$13 per hour)].

Additionally, we located a training roster that was completed and signed after-the-fact by Trainee No. 331. This reconstructed roster had training dates and hours pre-filled that did not match what was invoiced via ETP's Internet Class/Lab Tracking System or on the original training rosters. Instead, we found that Trainee No. 331 had crossed-out the dates and hours on the reconstructed roster, to dates and hours which matched the Computer Skills training schedule. To provide an example of the differences in training documentation, the table below provides a 3-week snapshot during May 17, 2005 through June 7, 2005, of the following: 1) dates and hours reported to ETP; 2) the dates and hours on the ATI Computer Skills training schedule; 3) the dates and hours per the corrected reconstructed training roster for Trainee No. 331; and 4) the dates and hours per original training rosters.

Training Dates per ETP's Internet C/L Tracking System	Training Hours per ETP's Internet C/L Tracking System	San Jose/ Session No. 2 - Dates per ATI Training Schedule	San Jose/ Session No. 2 - Training Hours per ATI Training Schedule	Training Hours Corrected by Trainee No. 331	San Jose/ Session No. 2 - Training Hours on Original Rosters
05/17/05	2	05/17/05	2	2	8
05/18/05	2	--	--	--	--
05/24/05	2	05/24/05	2	2	8
05/25/05	2	--	--	--	--
--	--	05/31/05	2	2	8
06/01/05	5	--	--	--	--
06/02/05	5	--	--	--	--
06/03/05	5	--	--	--	--
06/06/05	5	--	--	--	--
06/07/05	5	06/07/05	2	2	8
Totals	33		8	8	32

FINDINGS AND RECOMMENDATIONS (continued)

Overall, based on the extensive lack of any training documentation whatsoever, material discrepancies between training hours reported on original training rosters versus ETP's Internet Class/Lab Tracking System, training hours shown on ATI's training schedules, ATI's training invoices and corresponding payments from MBI, and other training-related documentation, ETP concludes that the required minimum training hours were not met for 672 of the 689 trainee placements (98 percent).

Recommendation Marquez Brothers International must return \$1,582,971 to ETP. In the future, MBI should conduct trainee assessments prior to the start of any training to determine whether trainees in certain occupations actually need and can participate in (a maximum of 200 hours of) training. During the delivery of training, MBI should enact sufficient management controls regarding training records to facilitate the accurate recording of training data and initiate a system of verification to ensure that training hours reported to ETP for reimbursement are accurate prior to claiming reimbursement. Additionally, MBI should ensure trainees meet the required training hours specified in the Agreement prior to claiming reimbursement from ETP. All training hours reported to ETP must be an accurate representation of actual training provided. Furthermore, the Contractor should ensure that sufficient documentation to support training hour requirements is maintained in accordance with Title 22, California Code of Regulations.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 2 – Ineligible Trainee Occupations

MBI claimed reimbursement for 20 trainees who were not employed in occupations specified in the Agreement (see Attachment B). We previously disallowed training costs claimed for 17 of the 20 trainees in Finding No. 1, except for Trainee Nos. 37, 354, and 355. Thus, we have disallowed \$5,538 in training costs for the remaining 3 trainees (\$2,600 + \$1,586 + \$1,352).

Exhibit A, VII. A. of the Agreement states, “Employment for each trainee shall be in the occupations listed in [the Agreement]....” The occupations identified in the Agreement did not include Commercial Divers, Drivers, or Driver Assistants, or any executive staff occupations.

Paragraph 5i, page 4 of the Agreement states, “No senior level managers or executive staff who set company policy are included in ETP-funded training under this Agreement.”

The following table shows the job title, as provided by MBI, for the 20 trainees.

Trainee No.	Job No.	Job Title
18	1	Commercial Driver
37	1	Controller
38	2	Controller
261	1	Commercial Driver
294	2	Vice-President
307	2	Driver
345	2	Director
347	2	Chief Executive Officer
349	1	Vice-President
354	1	Vice-President
355	2	Vice-President
356	2	Vice-President
388	1	Commercial Driver
390	1	Commercial Driver
418	1	Commercial Driver
419	2	Commercial Driver
557	2	Driver Assistant
619	2	Driver
652	1	Chief Financial Officer
653	2	Chief Financial Officer

FINDINGS AND RECOMMENDATIONS (continued)

Recommendation MBI must return \$5,538 to ETP. In the future, the Contractor should ensure all trainees are employed in the occupations specified in the Agreement and/or were not employed in senior level or executive positions, prior to claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 3 – Minimum Wage Requirement Not Met

Trainee employment information shows that 23 trainees did not meet the minimum wage requirement specified in the Agreement (see Attachment C). We previously disallowed training costs claimed for 22 of the 23 trainees in Finding No. 1, except for Trainee No. 528. Thus, we disallowed \$2,600 in training costs for the remaining trainee.

Exhibit A, paragraph VI. A. of the Agreement between MBI and ETP states, “Each trainee must be employed full-time... for a period of at least ninety (90) consecutive days immediately following the completion of training... Wages at the end of the 90-day retention period shall be equal to or greater than the wages listed in [the Agreement].”

Based on their county of employment, the Agreement required minimum hourly wage rates of \$11.16 to \$12.17 for Job No. 1 and \$11.34 to \$12.37 for Job No. 2 following the post-training retention period. The Agreement allowed the Contractor to include the dollar value of employer-paid health benefits to meet minimum wage requirements.

The review of payroll records and health benefit documentation from MBI shows that 23 trainees did not meet ETP minimum wage requirements. The table below shows the hourly wage rate reported by MBI, the required wage rate, actual wage rate from payroll records, employer-paid health benefits, and total actual wage rate:

Trainee No.	Job No.	Reported Wage Rate	Required Wage Rate	Wage Rate Per Payroll Records	Employer-Paid Health Benefits	Total Actual Wage Rate
20	2	\$12.30	\$12.37	\$9.80	n/a	\$9.80
55	1	\$12.75	\$12.17	\$7.25	\$1.31	\$8.56
107	2	\$12.50	\$11.34	\$8.17	\$1.24	\$9.41
129	1	\$12.75	\$12.17	\$7.25	\$1.31	\$8.56
133	1	\$12.75	\$12.17	\$7.75	\$1.31	\$9.06
185	1	\$12.75	\$12.17	\$9.00	\$1.44	\$10.44
205	1	\$12.75	\$11.16	\$7.00	\$2.37	\$9.37
206	2	\$12.50	\$12.37	\$7.00	\$1.55	\$8.55
210	1	\$13.50	\$12.02	\$8.50	\$1.44	\$9.94
264	2	\$12.50	\$12.37	\$10.00	\$1.11	\$11.11

FINDINGS AND RECOMMENDATIONS (continued)

Trainee No.	Job No.	Reported Wage Rate	Required Wage Rate	Wage Rate Per Payroll Records	Employer-Paid Health Benefits	Total Actual Wage Rate
397	2	\$12.50	\$12.37	\$10.00	\$1.44	\$11.44
407	1	\$12.75	\$11.16	\$6.75	\$1.42	\$8.17
409	1	\$12.75	\$11.16	\$7.00	\$1.44	\$8.44
414	2	\$12.50	\$12.37	\$8.00	\$2.52	\$10.52
428	1	\$12.75	\$12.17	\$10.00	\$1.11	\$11.11
528	1	\$13.50	\$12.17	\$10.00	\$0.90	\$10.90
529	2	\$12.30	\$12.37	\$10.00	\$0.90	\$10.90
547	1	\$12.75	\$11.16	\$7.25	\$1.11	\$8.36
578	1	\$12.75	\$11.16	\$6.75	\$1.11	\$7.86
582	1	\$12.75	\$11.16	\$7.25	\$2.10	\$9.35
601	1	\$15.25	\$11.16	\$7.36	\$1.11	\$8.47
602	2	\$12.50	\$11.34	\$7.00	\$1.11	\$8.11
645	2	\$12.50	\$12.37	\$9.83	\$1.11	\$10.94

Recommendation MBI must return \$2,600 to ETP. In the future, the Contractor should ensure trainees meet the minimum wage rate requirements with (or without) employer-paid health benefit costs prior to claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 4 – MBI's payroll and personnel records show that 8 trainees did not meet post-training requirements (see Attachment D). We previously disallowed training costs claimed for 6 of the 8 trainees in Finding Nos. 1 or 2, except for Trainee Nos. 26 and 339. Thus, we disallowed \$936 in training costs for the remaining trainees. Additionally, this finding further illustrates the questionable validity of training hours reported via ETP's Online Class/Lab Tracking System for Trainee Nos. 20, 26, and 274.

Exhibit A, paragraph VII-A states, "Each trainee must be employed full-time, at least 35 hours per week with the Contractor... for a period of at least ninety (90) consecutive days immediately following the completion of training. The retention period shall be completed no later than the last day of this Agreement."

MBI's employment history report and payroll summaries show that each of the 8 trainees did not work at least 35 hours per week during their 90-day retention period. The following table shows the retention period, termination date and average hours worked per week for which California wages were reported to EDD.

Trainee No.	Job No.	Post-Training Retention Period	Date Trainee Terminated	Average Hours Per Week
20	2	04/08/06 - 07/07/06	8/26/2005	n/a
26	2	04/07/06 - 07/06/06	3/17/2006	n/a
264	2	04/08/06 - 07/07/06	11/10/2006	24
274	1	01/15/05 - 04/15/05	1/10/2005	n/a
339	2	12/09/05 - 03/09/06	3/6/2007	31
354	1	01/15/05 - 04/15/05	n/a	0
380	2	04/08/06 - 07/07/06	6/1/2006	0
598	2	04/08/06 - 07/07/06	n/a	23

Trainee No. 20 had 200 training hours reported during January 8, 2006, through April 7, 2006. However, employment records show that Trainee No. 20 was terminated from employment by MBI on August 26, 2005, prior to any of the reported training dates. Also, Employment Development Department (EDD) further supports this trainee was not an employee of MBI during any of the reported training dates (Note: no original training rosters were available to review for Trainee Nos. 20, 26, and 274).

FINDINGS AND RECOMMENDATIONS (continued)

Trainee No. 26 had 160 training hours reported during February 8, 2006, through April 6, 2006. However, employment records show that Trainee No. 26 was terminated from employment by MBI on March 17, 2006. There were 48 hours of Literacy Skills training reported on or after March 17, 2006.

Trainee No. 274 had 200 training hours reported during December 1, 2004, through January 14, 2005. However, employment records show that Trainee No. 274 was terminated from employment by MBI on January 10, 2005. There were 40 hours of Computer Skills training reported on or after January 10, 2005.

Trainee No. 354 was not employed in California during the reported retention period for Job No. 1, as no wages were reported to EDD.

Recommendation MBI must return \$936 to ETP. In the future, the Contractor should ensure trainees meet post-training employment requirements as specified in the Agreement prior to claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 5 –
Noncompliance
with California
Unemployment
Insurance (UI)
Code and
Subagreement
Payment
Provisions

Documentation provided by MBI show payments made to ATI College (ATI) for administration and training services did not comply with the following ETP requirements: 1) consulting fees for development of the Agreement were based on a percentage of the final panel award; 2) administrative costs exceed the maximum allowable administrative costs; and 3) MBI's payments for training services to ATI College and Peak International did not conform to subagreement terms.

The following criteria are applicable:

- California Unemployment Insurance (UI) Code, Section 10206(a) (1) (D) states "A contractor is prohibited from utilizing any funds earned or paid as advances or progress payments for the purpose of making payments to any other individual or entity..., or for other compensation related to the predevelopment or development phase of a training program, which is based on a percentage of the preliminary or final panel award to the contractor for the training project."
- California Unemployment Insurance (UI) Code, Section 10206(a) (1) (B) states administrative costs shall not exceed 15 percent of training costs.
- The "Service Details" of two subagreements dated November 8, 2004, and April 7, 2005 (for Amendment No. 1), between MBI and ATI state that ATI College will provide 43,500 hours of training for \$732,000 during the ETP Agreement, as follows:
 - 1) \$370,000 to train 20,000 hours in Business Skills training;
 - 2) \$156,000 to train 12,000 hours in Computer Skills training;
 - 3) \$150,000 to train 7,500 hours in Manufacturing Skills training; and
 - 4) \$56,000 to train 4,000 hours in Management Skills training.
- The subagreement between MBI and Peak International states Peak International will provide training in Sales Techniques and Six Sigma for a total of \$128,750.

ETP audit team reviewed the following source documents: 1) training and administration subagreements; 2) invoices submitted by ATI College and Peak International to MBI; 3) MBI's accounts payable ledger regarding payments for training and administration services made to ATI and Peak International; and 4) original rosters for training services provided by ATI and Peak International. Our analysis of these documents follows:

FINDINGS AND RECOMMENDATIONS (continued)

1. ATI College – Consulting/Development Fees

MBI's Agreement with ETP was initially approved at the Panel meeting on October 29, 2004, for \$780,000. Contract Amendment No. 1 was approved at the Panel meeting on October 28, 2005, for an additional \$1,248,000 in proposed funding. Thus, the total ETP Agreement was \$2,028,000 (\$780,000 + \$1,248,000). As presented at the initial October 2004 Panel meeting, the ETP 130 Panel memo stated that "ATI College assisted in the development and completion of the ETP application at no cost to the employer." ETP found this not to be accurate. Instead, the audit team found that ATI College submitted invoices to MBI requesting that 10 percent of the contract awarded by the Panel be paid to ATI College as consulting fees. MBI provided an accounts payable ledger which documented \$202,800 (\$2,028,000 x 10 percent) in payments made to ATI College for consulting fees.

The California Unemployment Insurance Code (UI) prohibits a Contractor from making payments with ETP funds to any other entity for development fees of a training program, which is based on a percentage of the final panel award. Since MBI was paid \$1,698,307 by ETP, less than the Panel award, the consulting fee of 10 percent based on the amount paid would have been reduced to \$169,831. However, based on the results of this audit, the amount of earned ETP funds was \$106,262, accounting for consulting fees of only \$10,626 based on the 10 percent fee delineated above.

[Note: Review of MBI accounts payable ledgers also revealed that ATI College was paid \$123,000 for consulting/development fees for a planned second agreement ET07-0232 for \$1,249,560 that was approved by the Panel on December 15, 2006. However, no funds were ever paid by ETP to MBI since the contract was later withdrawn by MBI.]

2. ATI College – Administration

MBI subcontracted with ATI College to provide administration for 10 percent of earned ETP funds or \$169,830 (\$1,698,307 x 10 percent). These administrative services were to include, in part: 1) enrollment of all trainees into ETP's Online System; 2) process progress payment requests via ETP's Online System; 3) recording training attendance for each trainee via ETP's Online System; and 4) provide the ETP analyst with copies of rosters, subagreements, spreadsheets, or other requested training related documents.

MBI instead made payments for administrative services to ATI College for \$175,131, or an excess of \$5,301 (amount may be off

FINDINGS AND RECOMMENDATIONS (continued)

by a dollar due to rounding). This excess amount can be isolated to Invoice No. 2265 submitted by ATI to MBI for payment. The corresponding ETP Invoice was No. 12, which was initially submitted to ETP for a progress payment of \$118,950, but it was later revised to \$65,929.50. ETP Fiscal staff had informed MBI of the reduction in a letter dated October 5, 2005. However, MBI's copy of Invoice No. 2265 reflected the overpaid amount of \$11,895 ($\$118,950 \times 10$ percent) instead of \$6,593 ($\$65,929.50 \times 10$ percent). When ETP Auditor questioned ATI Representative No. 2 about the difference, the representative provided another Invoice No. 2265 showing the corrected invoice amount of \$6,593. However, ATI Representative No. 2 could not recall why separate invoice amounts existed for the same invoice number.

Further, based on the total amount paid by ETP to MBI, maximum allowable administrative costs should not exceed \$221,518 [$(\$1,698,307 \times 15 \text{ percent}) / 1.15$]. However, based on allowable training costs, the maximum allowable administrative costs would be \$13,860 [$(\$106,262 \times 15 \text{ percent}) / 1.15$]. Thus, based on the results of this audit, MBI overpaid ATI College for administrative services by \$161,271 ($\$175,131 - \$13,860$).

3. ATI College – Training

MBI's training subagreement with ATI College stated they were to provide 43,500 hours of training for \$732,000 during the ETP Agreement in Business Skills, Computer Skills, Manufacturing Skills, and Management Skills training. Thus, ATI College was to provide 33 percent of the total hours submitted for payment via ETP's Online Class/Lab Tracking System (43,500 hours/ 130,639 hours reimbursed).

Conversely, MBI only paid ATI College a total of \$108,650 for training services, or approximately 15 percent of planned training ($\$108,650 / \$732,000$ training subagreement amount). Based on the \$75 per hour cost as itemized on ATI invoices, ATI appears to have been paid to provide 1,449 training hours ($\$108,650 / \75 per hour). This would account for only 1 percent of the total training hours submitted for invoicing and billing via ETP's Online Class/Lab Tracking System (1,449 training hours/ 130,639 hours reimbursed).

Original training rosters provided by MBI obtained for all ATI College provided training, only accounted for 771 total training hours. These training rosters were only inclusive of Computer Skills Training (e.g. Microsoft Word, PowerPoint, and Excel). No training rosters were found in which ATI College provided Business Skills, Manufacturing Skills, and Management Skills to MBI employees.

FINDINGS AND RECOMMENDATIONS (continued)

4. Peak International - Training

Peak International was to provide Sales Techniques and Six Sigma training to MBI employees for a total of \$128,750. MBI paid Peak International \$93,400 to provide Sales Techniques training to MBI employees; while no training rosters were found in which Peak International provided Six Sigma training.

In summary, below is a schedule detailing the amounts paid by MBI to ATI College for consulting/development fees, administrative services, training services, and miscellaneous fees; amounts paid by MBI to Peak International for training services and miscellaneous fees are also detailed:

Fees	ATI College	Peak International
Consulting/ Development Services	\$325,800*	--
Administration Services	\$175,131	--
Training Services	\$108,650	\$93,400
Misc. (Travel, Training Assessment, etc.)	\$14,526	\$9,437
Totals	\$628,107	\$102,837
* = Please note that \$123,000 of the \$325,800 was paid for consulting/development fees for a planned second ETP Agreement.		

Recommendation In the future, MBI should ensure payments to subcontractors for contract development and administration comply with all applicable provisions of the California Unemployment Insurance Code. Furthermore, MBI should verify that administrative subcontractors are paid in compliance with their own subagreements based on verified training hours and that fees paid to training subcontractors are supported by accurate original training records maintained by MBI.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 6 – Trainee hourly wage rates reported on invoices submitted to ETP by ATI on behalf of MBI were inaccurate. As a result, the Contractor did not comply with the Agreement reporting requirements.

Paragraph 2(d) of the Agreement states, “Contractor shall submit invoices and necessary statistical data to ETP in form and manner prescribed by ETP”. Accurate, complete trainee wage rate information is required to verify compliance with Exhibit A, page 5, paragraph VII-A of the Agreement. This section states, “Each trainee must be employed full-time... for a period of at least ninety (90) consecutive days immediately following the completion of training... Wages at the end of the 90-day retention period shall be equal to or greater than the wages listed in [the Agreement].”

We documented actual trainee wage rates from MBI payroll records for 69 sample trainees. Actual wage rates were identified from payroll information provided by MBI. Trainee wage rates reported by MBI varied by 5 percent or more from actual wage rates for 57 out of 69 trainees (83 percent).

Additionally, a deliberate misreporting of trainee wages was clearly evident for senior level managers and executive staff previously identified in Finding No. 2. As shown in the table below, hourly wages at enrollment were either not provided or were above \$90.00 per hour for 3 of the 4 trainees with wages reported. However, hourly wages for all senior level managers and executives were invoiced during placement at \$10.00 to \$12.75, which appears to be an intentional misreporting of actual hourly wages to avoid detection during ETP staff’s review.

Trainee No.	Job No.	Job Title	Hourly Wage Before Training [Enrollment]	Hourly Wage After Retention [Placement]
37	1	Controller	\$93.15	\$12.75
38	2	Controller	none	\$10.00
294	2	Vice President	none	\$10.00
347	2	CEO	none	\$10.00
349	1	Vice President	\$33.65	\$12.75
354	1	Vice President	\$129.60	\$11.00
355	2	Vice President	none	\$10.00
356	2	Vice President	none	\$10.00
652	1	CFO	\$684.60	\$12.75
653	2	CFO	none	\$10.00

FINDINGS AND RECOMMENDATIONS (continued)

According to ATI Representative No. 1, ATI submitted hourly wage rates to ETP at enrollment and final invoicing based on information provided by MBI. We found that MBI prepared an "ETP Participant List" that included trainee names and hourly wages, which was sent to ATI for input into ETP's Online Systems. ETP reviewed an ETP Participant List dated March 28, 2005, presented by ATI Representative No. 1. Again, ETP found that wage rates submitted by MBI to ATI appear to have been modified by an ATI representative, with an increase or decrease in hourly wages, before the wages were input into ETP's Online Forms system for final invoicing.

Recommendation	In the future, MBI should ensure all trainee wage rates submitted to ETP are accurate and complete, whether this process is handled by a contract administrator or internally. Inaccurate or incomplete data may result in repayment of unearned funds, plus applicable interest to ETP.
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ATTACHMENT A – Appeal Process

4450. Appeal Process.

- (a) An interested person may appeal any final adverse decision made on behalf of the Panel where said decision is communicated in writing. Appeals must be submitted in writing to the Executive Director at the Employment Training Panel in Sacramento.
- (b) There are two levels of appeal before the Panel. The first level must be exhausted before proceeding to the second.
 - (1) The first level of appeal is to the Executive Director, and must be submitted within 30 days of receipt of the final adverse decision. This appeal will not be accepted by the Executive Director unless it includes a statement setting forth the issues and facts in dispute. Any documents or other writings that support the appeal should be forwarded with this statement. The Executive Director will issue a written determination within 60 days of receiving said appeal.
 - (2) The second level of appeal is to the Panel, and must be submitted within 10 days of receipt of the Executive Director's determination. This appeal should include a statement setting forth the appellant's argument as to why that determination should be reversed by the Panel, and forwarding any supporting documents or other writings that were not provided at the first level of appeal to the Executive Director. If the Panel accepts the appeal and chooses to conduct a hearing, it may accept sworn witness testimony on the record.
 - (A) The Panel must take one of the following actions within 45 days of receipt of a second-level appeal:
 - (1) Refuse to hear the matter, giving the appellant written reasons for the denial; or
 - (2) Conduct a hearing on a regularly-scheduled meeting date; or
 - (3) Delegate the authority to conduct a hearing to a subcommittee of one or more Panel members, or to an Administrative Law Judge with the Office of Administrative Hearings.
 - (B) The Panel or its designee may take action to adopt any of the administrative adjudication provisions of the Administrative Procedures Act at Government Code Section 11370 *et seq.*, for the purpose of formulating and issuing its decision. Said action may take place at the hearing, or in preliminary proceedings.
 - (C) Upon completion of the hearing, the record will be closed and the Panel will issue a final ruling. The ruling may be based on a recommendation from the hearing designee. The ruling shall be issued in a writing served simultaneously on the appellant and ETP, within 60 days of the record closure.
- (c) The time limits specified above may be adjusted or extended by the Executive Director or the Panel Chairman for good cause, pertinent to the level of appeal.
- (d) Following receipt of the Panel's ruling, the appellant may petition for judicial review in Superior Court pursuant to Code of Civil Procedure Section 1094.5. This petition must be filed within 60 days from receipt of the Panel's ruling.

Authority: Section 10205(m), Unemployment Insurance Code; Section 11410.40, Government Code.

Reference: Sections 10205(k), 10207, Unemployment Insurance Code.

Effective: April 15, 1995

Amended: December 30, 2006